

General Terms of Delivery of Ensinger Sintimid GmbH

I. Scope, Rejection of external DCC

1. We provide goods and services solely on the basis of these General Terms of Delivery, no matter whether the case in question is based on a purchase agreement, work agreement or factory supply contract or any other contractual relationship. This also applies for future transactions.
2. We only agree to the inclusion of the General Terms and Conditions of our customers if we have expressly confirmed them in writing.

II. Technical Documentation, Moulds and Tools

1. If we send the customer technical documentation and specifications on our products, such as diagrams or technical drawings, then the customer is only allowed to use these for the purpose we intended and is not permitted to copy or give third parties access to them apart from government authorities and courts. We retain the title and copyright of such documentation. As requested by us, the customer has to return them to us immediately free of charge.
2. Providing no alternative agreement has been reached, moulds and any other tools remain our property, even if the customer bears the cost of them.

III. Material provision

If the customer has to provide materials, then these are to be supplied by him on time, at his risk and expense with an appropriate quantity surplus of at least 5% and of a quality suitable for its purpose and specification. If the customer provides too little or defective material or provides it late, then he is responsible for the additional costs resulting from this including those resulting from interruption in production, with the exception of cases of force majeure.

IV. Confirmation of order

1. The contract is made binding by our confirmation of order in so far as we confirm the transaction directly, by whatever means, after oral, written or telephonic negotiations and the customer is a commercial entity or, as an independent trader, does not only play a minor part in business life and concludes the transaction within the operations of his company.
2. This does not apply if we could not expect customer's consent or customer objects to our confirmation immediately.

V. Prices and Price increases

1. Unless our prices and charges are agreed as fixed on ordering, our prices or remuneration rates shall be those valid on the day of delivery.
2. Our prices are set ex works and not including VAT. Packaging, transport and other additional services (such as customs clearance) will be charged separately.
3. For subsequent orders we are not bound by price agreements for preceding orders.
4. If part-deliveries are agreed to be delivered within a certain period of time or on certain dates or to be called off by the customer, then once 4 months after placing the order has passed, we reserve the right to increase the price for deliveries in accordance with our current pricing policy.
5. If the order is not executed within a year from it being placed, and this delay is not due to circumstances that are our responsibility, we reserve the right to increase the price with the customer to the same extent and to deliver the goods to complete the order and receive payment for the same.

VI. Terms of payment, offsetting

1. The terms of payment are net cash 30 days of the invoice date.
2. We accept bills of exchange and cheques only for payment purposes. The customer bears the cost of discounting and collection. In the case of payment by bill, we will not grant any cash discount.
3. Payments are only effective when the sum of money is finally at our disposal. The customer may only offset undisputed or legally agreed liabilities against payments due to us under this contract.

VII. Delay of payment or of the creditor, financial collapse of the customer

1. If payment is delayed, penalty interest under the terms of § 1333 (2) AGBG shall be paid on our remuneration. This shall not affect our claim for further damages.
2. In case of delayed payment or if there are major doubts about the solvency of the customer Ensinger Sintimid is entitled to assert all open claims, to demand payment in advance or collaterals from the customer, or to cancel parts of the contract or the whole contract.
3. During the delay of the creditor Ensinger Sintimid is entitled to invoice the goods.

VIII. Performance time, delay, retention, place of performance, part services

1. Delivery times do not start until we have agreed with the customer on all details of execution and all conditions for the transaction. Delivery times do not begin until the materials and technical documentation to be provided by the customer have been received, including all authorisations, technical specifications and approval by the customer. An agreed delivery date is delayed by the period of time by which these pre-requisites are also delayed.
2. If our services are provided late, we are not considered to be in default as long as the delay is based on circumstances which we could not have predicted or prevented given a reasonable level of care and which we cannot overcome by taking reasonable measures.
3. As long as the customer does not fulfil an obligation arising from the business relations, we have the right to defer our performance.
4. If the contract is a commercial transaction for the customer, he may only retain payment for the goods or services if we violate our obligations under the contract by gross negligence or our services are seriously deficient.
5. Placement and fulfilment for our performance is the supplier's plant in Seewalchen.
6. We have the right to partial performance.

IX. Bearing the Risk, Dispatch and Receipt

1. The risk for the goods is passed to the customer at the latest on dispatch of the goods to the customer. This also applies if we bear the transport costs for delivery. We are not obliged to insure the goods against in transit damage. If requested by the customer, we will insure the consignment against theft, transport damage as well as other insurable risks but the customer on placing the order must request this.
2. If dispatch is delayed for reasons beyond our control, then the risk for the goods is passed to the customer as soon as the goods are ready to dispatch.
3. The customer is to take delivery of the goods supplied, even if the goods are damaged, without affecting the customers' statutory rights. Defective goods are to be returned to us should we require it.

X. Transport damage

1. The customer must give notification of damage caused in transport or losses immediately, or within twenty four hours of receipt of goods, and must leave the consignment for inspection to be viewed as soon as possible. This also applies if the transport damage does not become apparent until the goods are unpacked or at a later date.
2. Damage caused in transport does not give the customer any reason to refuse the pay or to appeal to a right of lien.

XI. Notice of defects and guarantee

1. The customer must notify us of obvious defects in our performance within a week of receipt of the same; if he misses this deadline, our performance shall be deemed to be in accordance with the contract.
2. If our performance is deficient on transfer of risk, we shall meet this obligation subsequently, either, as we choose, by repairing the defect or by supplying an item free from defects in exchange for the defective item. Replaced parts become our property. If the attempt to meet this obligation fails, the customer may reduce payment to us or, as he chooses, withdraw from the contract. If a defect is maliciously concealed or if a guarantee is undertaken for the properties of the item, the statutory provisions will apply.
3. We do not take any responsibility for material supplied by the customer or obtained on the basis of specifications laid down by him or for structures specified by the customer.
4. Any claims on the part of the customer for subsequent fulfilment or for damages expenditure or compensation of expenditure due to defects shall expire, in the case of deliveries, a year from delivery of the goods. If we maliciously conceal the defect or have undertaken a guarantee regarding the properties of the item, the statutory provisions will apply.
5. Ensinger Sintimid guarantees that the sold products conform to general standards in consideration of manufacturing variability and that the products in general agree the specifications given by Ensinger Sintimid. If details are not part of the written specification, Ensinger Sintimid will not guarantee anything relating to these details.

XII. Damages and Statutory Limitation

1. If we should default in our performance, then we will compensate the customer the damages due to ordinary occurrences up to the amount of 1% of the price of the relevant goods ordered for every day of default, with a maximum payable by us of 10 % of the total price of the relevant goods ordered. We will pay the full damages in the case of intent or gross negligence.
2. If we have to pay damages compensation instead of fulfilment, we will repay to the customer the damages occurring on the basis of the normal course of affairs up to the total sum of the relevant goods ordered. We will pay the full damages in the case of intent or gross negligence.
3. Otherwise we are only liable for gross negligence or intentional infringement of our obligations. This also applies to information provided, advice as well as to unauthorised actions during preparation, conclusion and processing the contract.
4. Our general partner, the managing directors and our employees are liable to the customer for unauthorised actions carried out during preparation, conclusion and processing the contract only in the case of intention or gross negligence.
5. Claims for damages by the customer against us, our directors and our staff arising from the violation of precontractual and contractual obligations and from unauthorised actions committed in the preparation, conclusion and handling of the contract shall lapse a year from the end of the year in which the claim arose and the customer obtained knowledge of the circumstances justifying the claim and the identity of the party liable or should have obtained such knowledge without gross negligence.
6. Any claims by the customer for damages or compensation due to injury to life, body or health based on an intentional or negligent violation of obligations and against the violation of other major obligations which are important by the nature of the contract and for the achievement of the contractual purpose shall remain unaffected in every respect.

XIII. Withdrawal and assignment.

1. If we do not render service despite its being due or - with the exception of a defect in our goods or services - do not render service in accordance with the contract, the customer may define a reasonable deadline for such service or for subsequent fulfilment. The deadline must allow us to complete the service that has already been started; generally, the deadline period may not be less than two weeks. If we nonetheless do not provide the service or subsequent fulfilment within a reasonable period of time, the customer may withdraw from the contract. This does not apply if the service or fulfilment is not provided due to circumstances beyond our control.
2. If the asset situation of the customer deteriorates materially, if an application for his insolvency is made or if insolvency proceedings have been started, we are entitled to withdraw from the contract.
3. The customer may only assign his rights under this contract without our prior agreement to insurance companies and only in so far as these undertake to pay the damages claimed by the customer. Clauses 1392 ff. ABGB remains unaffected.

XIV. Security

1. Notwithstanding delivery the property in the Goods shall not pass to the Buyer until the Buyer has paid in full the price of the Goods and all outstanding claims in connection with the business relationship.
2. Processing or working with the reserved property by the customer takes place free of charge for us without it resulting in any obligations for us; the new object becomes our property. If the goods are processed with other goods which do not belong to the customer, then we acquire co-ownership of the new object in the ratio of the value of the reserved property to the value of the other goods; in the case of mixing, combining or blending we acquire co-ownership according to legal provisions. If the customer acquires sole ownership through mixing, combining or blending, then he already transfers co-ownership to us now in the ratio of the value of the reserved property to the value of the other goods at the time of the mixing, combining or blending. In the above mentioned cases, the customer has to keep in safe custody and free of charge the objects which we are owners or co-owners of which are also reserved property in the sense of the following provisions.
3. The customer already assigns to us claims arising from resale of the reserved property to the value of the reserved goods with all ancillary rights. The corresponding applies if the reserved property is installed into the property of a third party as a key component. If we retain title to the reserved goods, then the claims are assigned to the amount that corresponds to the value of our share of the overall value. The assignment of future claims also covers a possible balance claim from the current account. The customer is authorised to collect the claim.
4. As long as the customer does not default in his obligations to us, he has the right to avail himself of the reserved property in the ordinary course of business and under retention of title, providing the claims according to fig. XI.3 are effectively transferred. Extraordinary dispositions, such as pledges, chattel mortgage and any assignments are not permitted. We must immediately be informed of access of third parties to the reserved property or assigned claims, in particular pledges.
5. If the customer is in default of a payment due to us for longer than a week or if he undergoes forfeiture of assets, where he in particular ceases payment, our claims shall become payable immediately and any deferral of payment ends. In these cases, we are entitled to take the retention goods and to revoke the collection authorisation. The customer is - with rights of retention excluded - obliged to return same. If the customer is a consumer, he only has to return the retained goods to us if we have withdrawn from the contract. The acceptance and seizure of the retained goods by us shall not be considered as a withdrawal from the contract, except in consumer credit transactions. All the costs of the recovery and realisation shall be borne by the customer; we are entitled to sell the goods in the open market. Upon request, the customer shall provide us immediately with a list of the liabilities assigned to us according to Fig. 3 and shall give us all further information and documents necessary to apply our rights and notify the party liable of the assignment.
6. We undertake to release securities as we choose if the realisable value exceeds the total of our claims under the business arrangement by more than 15%.
7. If the retention of title or the assignment is not legally effective according to the laws of the country which the goods are in, then the security which comes as close as possible to the retention of title or assignment is considered to be agreed, if according to this the co-operation of the customer is required, then he has to undertake all legal transactions necessary to establish and retain such rights.

XV. Proprietary rights

1. If we have to render service on the basis of drawings, models, samples or using parts provided by the customer, the customer herewith states that this shall not violate the statutory rights of third parties. The customer releases us from any claims by third parties due to the violation of any rights and will reimburse us any damages arising and our costs and expenses. If the customer and/or we are forbidden to manufacture or deliver by a third party with reference to a proprietary right, we are entitled, without closer examination of the legal position, to cease the works.

XVI. Legal system and legal venue

1. If any provision of these conditions and the further agreements reached are or become invalid this shall not affect the validity of the remaining conditions. The contract partners are obliged to replace the invalid provision by a provision that comes as close as possible to it in terms of commercial success.
2. The law of Austria shall apply excluding Collision Law and the United Nations Agreement on contracts for the international sale of goods (CISG).
3. For all disputes arising directly or indirectly from contractual relationships based on these Austrian Terms of Delivery the local and competent jurisdiction complies with the legal venue of the Ensinger Sintimid. For legal action against the customer, the court at the customer's registered offices is also competent locally.